

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

* * * * *
*
ALBERT L. GRAY, Administrator,*
ET AL, *
Plaintiffs, *
*
vs. * CIVIL ACTION
* No. 04-312-L
JEFFREY DERDERIAN, ET AL, *
Defendants. *
*
* * * * *

ANSWER AND JURY CLAIM OF THE DEFENDANT, SUPERSTAR
SERVICES LLC, TO THE PLAINTIFFS' FIRST AMENDED MASTER COMPLAINT

The defendant, Superstar Services LLC, in the above-captioned matter, hereby make this its answer to the plaintiffs' first amended master complaint.

FIRST DEFENSE

PARTIES

Plaintiffs

1-240. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 240 and call upon the plaintiffs to prove the same.

241-270. No responses are required to paragraphs 241 through 270.

GENERAL ALLEGATIONS AS TO ALL DEFENDANTS

271. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraph 271 and calls upon the plaintiffs to prove the same.

ALLEGATIONS AGAINST OTHER NAMED DEFENDANTS
AND COUNT I THROUGH COUNT LXXVI

272-685. Paragraphs 272 through 685 are not directed to this defendant and therefore does not require a response; however, in the event that these paragraphs are read to be applicable to this defendant, the defendant denies the allegations contained therein.

COUNT LXXVII

686. The defendant incorporates herein by reference their answers to paragraphs 1 through 271 and 680 through 685 and make them its answer to paragraph 686 of Count LXXVII.

687. The defendant denies the allegations contained in paragraph 687 of Count LXXVII.

WHEREFORE, the defendants demand that the plaintiffs' complaint against them be dismissed and that judgment enter for the defendants, together with their costs.

SUPERSTAR SERVICES LLC

688. The defendant admits the allegations contained in paragraph 688 of Count LXXVII.

689. The defendant denies the allegations contained in paragraph 689.

690. The defendant denies the allegations contained in paragraph 690.

691. The defendant denies the allegations contained in paragraph 691.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

COUNT LXXVIII

692. The defendant incorporates herein by reference its answers to paragraphs 1 through 271 and 688 through 691 and make them its answer to paragraph 692 of Count LXXVIII.

693. The defendant denies the allegations contained in paragraph 693 of Count LXXVIII.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

COUNT LXXIX

694. The defendant incorporates herein by reference its answers to paragraphs 1 through 271 and 688 through 691 and make them its answer to paragraph 694 of Count LXXIX.

695. The defendant denies the allegations contained in paragraph 695 of Count LXXIX.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

COUNT LXXX THROUGH COUNT LXXXI

Paragraphs 696 through 706 of Counts LXXX through LXXXI are not directed to this defendant and therefore does not require a response; however, in the event that these Counts are read to be applicable to this defendant, the defendant denies the allegations contained therein.

SECOND DEFENSE

And further answering, the defendant says that the acts complained of were not committed by a person and/or entity for whose conduct the defendant was legally responsible.

THIRD DEFENSE

And further answering, the defendant says that the plaintiffs were not in the exercise of due care, but rather the negligence of the plaintiffs contributed to or caused the injury

or damage complained of, wherefore, the recovery of the plaintiffs is barred in whole or is subject to diminution under the comparative negligence law of the State of Rhode Island.

FOURTH DEFENSE

And further answering, the defendant says that the cause of action is barred by reason of the Statute of Limitations.

FIFTH DEFENSE

And further answering, the defendant says that the court does not have personal jurisdiction over the defendant, wherefore, the defendant requests that this action be dismissed pursuant to R.C.P. 12(b)(2).

SIXTH DEFENSE

And further answering, the defendant says that there was insufficient service of process pursuant to R.C.P. 12(b)(5).

SEVENTH DEFENSE

And further answering, the defendant says that the complaint should be dismissed pursuant to R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted.

EIGHTH DEFENSE

And further answering, the defendant says that the complaint should be dismissed pursuant to R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted, insofar as the plaintiffs have failed to give notice of any claim and/or unsafe condition as required by law, and the defendant was thereby prejudiced, wherefore the plaintiffs are barred from recovery.

NINTH DEFENSE

And further answering, the defendant states that they had no duty at law or common law to the plaintiffs and/or plaintiffs' decedents, wherefore the plaintiffs are barred from recovery.

TENTH DEFENSE

And further answering, the defendant says that to the extent

that it had any obligations to the plaintiffs and/or plaintiffs' decedents, such obligations have been fully, completely and properly performed in every respect.

ELEVENTH DEFENSE

The defendant states that there was no negligence, gross negligence, willful, wanton, or malicious misconduct, reckless indifference or reckless disregard of the rights of the plaintiffs and/or plaintiffs' decedents, or malice (actual, legal or otherwise) on the part of the defendant as to the plaintiffs and/or plaintiffs' decedents herein.

TWELFTH DEFENSE

And further answering, the defendant says that if the plaintiffs prove that the defendant was involved in any of the transactions alleged in the plaintiffs' complaint, the defendant acted in good faith at all times with respect to those transactions, and the plaintiffs are therefore barred from recovery.

THIRTEENTH DEFENSE

And further answering, the defendant says that if the plaintiffs and/or plaintiffs' decedents were injured or damaged as alleged, the plaintiffs and/or plaintiffs' decedents assumed the risk of such injuries or damage.

FOURTEENTH DEFENSE

And further answering, the defendant says that they are not liable to the extent that the plaintiffs' losses were a result of an unforeseeable intervening and/or superceding civil or criminal act or acts.

FIFTEENTH DEFENSE

And further answering, the defendant says that if the plaintiffs and/or plaintiffs' decedents sustained injuries and/or damages as alleged in the complaint, such injuries and/or damages were caused by the intervening and superseding acts of third persons, which acts the defendant did not and reasonably could not foresee and/or are remote.

SIXTEENTH DEFENSE

And further answering, the defendant says that in the event that the named plaintiffs are determined not to have standing to bring this action, defendant asserts such lack of standing as an affirmative defense.

SEVENTEENTH DEFENSE

And further answering, the defendant says that in the event that this defendant is determined to be a joint tortfeasor, defendant asserts that they are entitled to an allocation of relative degree of fault among all joint-tortfeasors so that the pro-rata share of each defendant can be determined in accordance with the Rhode Island Uniform Contribution Among Tortfeasors Act, R.I.G.L. § 10-6-1, et seq.

EIGHTEENTH DEFENSE

And further answering, the defendant says that the plaintiffs have failed to join a party or parties necessary for the just adjudication of this matter and have further omitted to state any reason for such failure.

NINETEENTH DEFENSE

And further answering the defendant says that the plaintiffs' claims are barred by estoppel or waiver.

TWENTIETH DEFENSE

And further answering, the defendant says that the plaintiffs are guilty of laches in bringing this action and are therefore barred from recovery.

TWENTY FIRST DEFENSE

And further answering, the defendant says that the plaintiffs' and/or plaintiff decedents' employer or employers were negligent with respect to the matters set forth in the First Amended Master Complaint, that such negligence caused in whole or in part the damages claimed to have been sustained as set forth in the First Amended Master Complaint and that the plaintiffs or plaintiff decedents claiming such damages received workmen's compensation benefits from his or her employer or employers.

Therefore, even if the plaintiffs are entitled to recover against the defendant, which the defendant specifically denies, they are not entitled to recover in the amount set forth in the First Amended Master Complaint because the defendant is entitled to set off any and all the aforesaid workmen's compensation payments against any judgment which might be rendered in the plaintiffs' favor.

TWENTY SECOND DEFENSE

The defendant incorporates by reference any and all affirmative defenses asserted by any other defendant not specifically set forth in its Answer and affirmative defenses.

JURY CLAIM

THE DEFENDANTS HEREBY MAKE CLAIM FOR A TRIAL BY JURY.

SUPERSTAR SERVICES, LLC.

By its attorney,



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CERTIFICATE OF SERVICE

I, T. Dos Urbanski, hereby certify that on this day, I forwarded notice of the foregoing document(s) by mailing a copy thereof, postage prepaid to the following:

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